

Chapter 16

Plans, Specifications, and Estimates

16.1 General Discussion

After a project's location and design have been approved, work begins on the final version of its plans, specifications, and cost estimates (PS&E). These documents are used to award and administer a construction contract. The PS&E must be approved as defined in Chapter 3, Becoming Certified to Administer FHWA Projects, before the project can be advertised for construction.

PS&E approval is done by the local agency as identified in the Montana Department of Transportation (MDT)/ Local Agency Certification Acceptance (CA) Agreement. The approving authority identified on the CA Agreement must approve the plans and specifications, and a professional engineer licensed in the state of Montana must seal and date the plans and specifications.

The local agency should use the Project Development Checklist (Chapter 4, Developing Projects Using Local Agency Guidelines) to check for completeness of the contract plans prior to approving them.

The local agency should have a commitment file, when applicable, containing a summary of commitments made during project development. The file should be reviewed to ensure that the commitments are incorporated in the PS&E. These commitments typically involve right-of-way or environmental considerations (see Appendix 16.74 for list of possible required permits).

A copy of the bid documents should be furnished to MDT CTEP Engineer prior to advertisement for a check of completeness.

Any local agency project with work on state routes shall obtain PS&E approval from MDT CTEP Engineer.

On state ad-and-award projects, MDT will review and approve the PS&E prior to printing contract plans. An estimate of the cost of this service can be obtained from the MDT CTEP Engineer. Refer to forms for a checklist.

16.2 PS&E Requirements

16.21 Wage Rates

For information on state law requirements, contact the MDT Contract Plan Bureau for a listing of current laws. State and federal wage rates must be included for all Federal Highway Administration (FHWA) projects advertised by a local agency. The wage rates used will reflect the latest rates approved by the Montana Department of Labor (DOL) and the U.S. Department of Labor. Refer to CFR 29 part 30 and MCA 18-2-402.

The Federal Davis-Bacon Act predetermined minimum wage must be paid to all covered workers on federal aid projects exceeding \$2,000 that are located on a federal-aid eligible highway. The Davis-Bacon requirements do not apply to force account work performed by agency forces.

If a project is located on a federally classified minor collector or below and is funded through either the bridge (BR), safety (HES) or enhancement category, the project is not subject to the federal wage rate requirement; only the State prevailing wage rate applies.

The applicability of Davis-Bacon to a transportation enhancement project is dependent on the relationship or linkage of the project to a federal aid highway. If the project is “linked” to a federal aid highway based on proximity or impact (i.e., without the federal aid highway the project would not exist), then Davis-Bacon requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc.

If the project is not “linked” to a particular federal aid highway and is eligible based solely on function (i.e., a transportation facility, such as an independent bike path, the restoration of a railroad station, etc.), then the Davis-Bacon requirements do not apply. However, the Davis-Bacon requirements apply to all projects greater than \$2,000 that are physically located within the existing right-of-way of a federal aid highway, regardless of the transportation enhancement characteristics.

Another Davis-Bacon issue is the acceptability of using volunteer labor on transportation enhancement projects. The Department of Labor states in its Field Operations Handbook (Section 15): “There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived.” The Davis-Bacon Related Act for the Federal Aid Highway Program (23 U.S.C. Section 113) is silent on this subject. Therefore, on transportation enhancement projects subject to Davis-Bacon coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a state highway or local government agency may use volunteer laborers under their direct control as a force account effort.

Local agencies may access the Wage Rate data at .

http://www.mdt.mt.gov/publications/docs/brochures/dbe_eeo/fedwagerate20030002.pdf If a local agency is not “on line,” wage rates can be requested through the MDT CTEP Engineer.

The effective date for state and federal rates is determined as follows:

- a. State Wage Rates. DOL will use the date that the project is advertised as the effective date for determining prevailing wages.
- b. Federal Wage Rates. This data is received from the USDOL in a document entitled “General Wage Determinations Issued Under the Davis-Bacon and Related Acts.” Modifications are issued weekly by the USDOL. The effective date for federal wage rates is the date of notice in the Federal Register or the date on which written notice is received by MDT, whichever occurs first. All modifications on projects to which the determination applies are effective if published before contract award. The following are exceptions:
 - The effective date for determining state prevailing wage rates shall be the date the project is advertised.
 - The effective date for determining federal prevailing wage rates shall be ten days prior to bid opening (or less if the engineer determines an addenda can be issued prior to bid opening).
 - Prior to bid opening, the local agency may contact the http://www.mdt.mt.gov/publications/docs/brochures/dbe_eeo/fedwagerate20030002.pdf or MDT Contract Plans Bureau at (406) 444-6214, to see if wage rates have changed or pending.
 - To minimize the possibility of out-of-date state and federal wage rates at the time of bid opening, the wage rates should be requested seven days before the advertising date.

16.22 Other Requirements.

- a. Form FHWA-1273. Each set of contract and sub-contract documents shall include Form FHWA-1273, "Required Contract Provisions, FHWA Construction Contracts," and such amendments that modify the FHWA-1273. Copies of the FHWA-1273 Form and amendments are available from the MDT Contract Plans Section. Form 1273 must be physically incorporated in all contracts and sub-contracts.
- b. Affirmative Action. See Chapter 11, Equal Employment Opportunity and Training.
- c. Disadvantaged Business Enterprises. In accordance with FHWA and MDT efforts to increase DBE (Disadvantaged Business Enterprises) participation in FHWA projects, MDT has developed a management-by-objective goal-setting process for DBE participation. For additional information, see Chapter 11, Disadvantaged Business Enterprises.
- d. "Buy-America" Requirements. Steel that is permanently incorporated into the project shall consist of American-made materials, as outlined in the *MDT Standard Specifications*, Section 106.09.
- e. Traffic Control Plans. Traffic Control Plans (TCP) shall be consistent with Part VI of the MUTCD and shall be referenced in the contract documents.
- f. Justification for nonparticipating (non federal-aid eligible) work items, if included in the contract (tied bids), must be documented by the local agency. Combining of bid items shall not increase the cost of the federally funded project
- g. Justification for the use of agency-supplied materials must be documented by the local agency. The materials must have been produced by agency forces or acquired through competitive bidding. Material purchased from a sole source may be used only with MDT approval.

Local Ad and Award Projects. See Chapter 17. State Ad and Award Projects. See Chapter 17.

16.3 Document Requiring Professional Stamps

The following documents require a PE stamp upon completion. The Professional Engineer with responsible charge of the project will assure that appropriate engineering reports and documents are stamped in accordance with MCA 18.2.122. If a particular "Engineering Report or Document" is not listed, it is not necessarily exempt from the requirement.

In nearly all cases, the responsibility will rest with the agency or consultant PE, but if a MDT engineer has responsible charge of a particular item, they will also have the responsibility to stamp the appropriate document. The list includes:

- Design Reports
- Type, Size, and Location Report
- Design Decision Summary
- Plan title sheets (this serves to indicate that professional engineer has responsible charge for the entire plan package)
- Special Provisions
- Plans for Falsework and Forms, normally the contractor's responsibility
- Bridge Design Report

- As Built Plans
- Emergency Contracts that contain the equivalent of PS&E documents

In addition to requiring a P.E. stamp from the local agency or consultant, the following documents will require MDT approval:

- Design Approval Report
- Technical Change Orders
- Value Engineering Study Report
- Design Exceptions Request

16.4 Contract Plans

For state ad-and-award projects, the plans should be prepared in accordance with the MDT *Road Design Manual*. For local ad-and-award projects, there are no federal or state requirements for plan sheet size or guidelines for preparing contract plans.

For both state and local ad-and-award projects, the plans shall carry the seal and signature of a registered Professional Engineer, in accordance with MCA 37-67-101.

16.5 Specifications

MDT publishes and distributes the *Standard Specifications for Road and Bridge Construction*, *Supplemental Specifications* and the Detailed Drawings. The Montana Contractors' Association, Inc. publishes and distributes the Montana Public Works Standard Specifications.

16.51 Standard Specifications for Road and Bridge Construction

All FHWA funded projects, including local agency force projects, will be constructed and administered in conformance with the current combined MDT and MPW *Standard Specifications*, and such amendments that modify these specifications.

16.52 Supplemental Specifications

These supplements are approved changes to the *Standard Specifications*.

16.53 Special Provisions

Since Special Provisions are specifications governing matters peculiar to an individual project, they are not covered in the *Standard Specifications*. Their use should be held to a minimum and applicable *Standard Specifications* should be used instead. Issues mandated in the state and federal laws shall not be changed.

Special Provisions are required:

- a. For the presentation of all features of a project not covered by the *Standard Specifications* and *Special Provisions*.
- b. Where the *Standard Specifications* are being amended.
- c. For any deviation from the *Standard Specifications* with regard to materials, construction details, measurement, and payment.
- d. When noted in the MDT Standard Item Table.

The following paragraphs discuss some pertinent aspects of special provisions.

- All nonstandard pay items shall be covered in the Special Provisions.
- For high cost and major projects, the local agency is encouraged to include a value engineering incentive clause in their construction specifications encouraging the contractor to propose changes in contract requirements that will accomplish the project's functional requirements at less cost. Guidelines for Value Engineering proposals are contained in Section 104.08 of the *MDT Standard Specifications*.
- Traffic control must be in accordance with the MUTCD. A Special Provision shall be prepared outlining traffic control requirements and including any pay items.
- Neatline measurement of quantities is allowed by special provision. This specification may allow payment of the neatline measurement from the lines and grades as shown on the plans or as directed by the Engineer's stakes on the ground. This may apply to aggregates, base course, and surfacing. On asphalt quantities, the unit price could include the cost of coring to verify density and depths. Culvert and pipeline installation may be paid by the lineal foot-in-place with bedding, backfill, and compaction as incidental to the unit price. In these instances, an item should be added for extra excavation or backfill if the profile varies or is subject to change during the contract. Shoring must be paid as a separate bid item.
- Direct reference to proprietary specifications of national, regional, or local trade associations should not be included in FHWA contract specifications; such proprietary specifications are subject to change without notice to, or acceptance by, the state or FHWA. If proprietary specifications must be used, the complete text, or such parts as are applicable, should be incorporated into special provisions for the project. In order to use proprietary specifications, the public interest finding must be prepared by the local agency and approved by MDT.
- The use of trade names in specifications and on plans should be avoided. Instead, specifications should be formulated to assure full opportunity for competition among equivalent materials, equipment, and methods. References in specifications and on plans to single trade-name materials require justification. However, where satisfactory specifications based on laboratory tests or other performance requirements cannot be developed or obtained from organizations which develop specifications, a local agency may use trade name designations, provided that at least three names of acceptable materials or products, if available, are listed. Experimental and research items require MDT approval.

16.6 Estimates

The engineer's estimate of a proposed project's cost shall include the estimated quantity and estimated unit price for each proposed work item. Bridge items shall be segregated from roadway items. A tabulation for each bridge showing its applicable items shall be submitted.

If materials salvaged from the project are to be used for roadway purposes, the value of such materials should not be included in the project cost.

The estimate shall separately list the costs of nonparticipating items, local agency force work, and local agency furnished materials.

The separate cost groups shall be summarized and totaled on the first sheet of the estimate.

The MDT CTEP Engineer may be contacted for assistance in preparing the estimate. A sample estimate is shown in Appendix 16.73.

16.7 Appendices

- 16.71 Sample Proposal (Metric/English)
- 16.72 Sample Contract
- 16.73 Sample Estimate and Grouping (Metric/English)
- 16.74 Permits
- 16.75 Local Agency Plans Preparation Checklist
- 16.76 Subcontractor List
- 16.77 Disadvantaged Business Enterprise Utilization Certification
- 16.78 Sample Invitation for Bids
- 16.79 Form 1273 Required Contract Provisions, FHWA Construction Contracts
- 16.80 Form LLL Disclosure of Lobbying Activities
- 16.81 EEO Affirmative Action Requirements on Federal & Federal-Aid Construction Contracts

Appendix 16.71 Sample ProposalPROPOSAL

Sealed bids for construction of this project will be received by the Montana Department of Transportation-Highways Division, Contract Plans Section, Room 101, 2701 Prospect, Helena, Montana until 9:00 a.m. on, the bids being publicly opened and read thereafter at 10:00 a.m. in the Department's auditorium.

Bid proposals, plans, Standard Specifications, Detail Drawings, and Standard Contract Forms are on file for examination and may be obtained from the Contract Plans Section of the Montana Department of Transportation-Highways Division, 2701 Prospect Avenue, P.O. Box 201001, Helena, Montana 59620-1001.

It is the Commission's and Department's requirement that bids submitted for projects be complete and accurate, and that to the maximum extent practicable they accurately reflect what the taxpayers will spend for the completion of the work called for in the project's plans and specifications. It is the requirement of the Commission and the Department that it is each bidder's responsibility to ensure that:

1. They have obtained all the information necessary to accurately and completely prepare its bid. That information specifically includes questions raised by potential bidders on this project, and answers as well as any other information from the Department, that has been posted to the Department's "Question & Answer Forum" found at the website www.mdt.mt.gov/business/scripts/aqforum/qahtml.pl as of 5:00 pm the day prior to the bid opening.
2. The bid preparer was able to give the bid his full attention for the necessary time to ensure that it is complete, accurate and fully representative of the quality of work that the bidder will perform on the project. The bidder alone assumes all responsibility and risk for any omissions or errors it made in its bid, including errors resulting from workload or delay; and,
3. If it appears from the bid-opening that the bidder's bid is significantly less than the other bids that were opened, the bidder will immediately have its bid thoroughly reviewed in order to immediately determine if an error was made in the bid. If so, the bidder must immediately, in writing, bring the error to the attention of the Department's Contract Plans Bureau, and must do so before the Commission awards the project in a meeting.

TO THE MONTANA DEPARTMENT OF TRANSPORTATION:

The below named bidder, in submitting this proposal for consideration on the above named project(s) confirms and certifies that:

- A. **AWARD OF CONTRACT.** Prior to submitting a bid, bidder has read and understands Section 102, Bidding Requirements and Conditions, and Section 103, Award and Execution of Contract, of the Standard Specifications for Road and Bridge Construction, 1995 Edition, adopted by the Montana Department of Transportation and the Montana Transportation Commission, and any Supplemental Specifications and/or Special Provisions contained herein which apply to said sections. Bidder agrees to comply completely with all requirements in Sections 102 and 103.
- B. **EXAMINATION OF BID DOCUMENTS & SITE OF WORK.** Bidder has examined carefully the site of the proposed work, the proposal, plans, standard specifications, supplemental specifications and special provisions, and is satisfied as to the project's requirements and the conditions to be encountered in performing the work in accordance with those requirements. Bidder had sufficient time to make the examination and to prepare its bid and assents to all provisions and requirements of the Contract, as defined in the Standard Specifications. Bidder would not submit this bid if it did not agree to each and every provision of the Contract. Bidder is aware of, and agrees to comply with, all applicable laws, regulations and rules, in accordance with Subsection 107.01. Bidder has not taken advantage of any apparent error, omission or ambiguity in the bid package or, if it discovered one, promptly notified the engineer in writing.

- C. SUBCONTRACTING OR ASSIGNMENT OF CONTRACT. Bidder agrees to meet the requirements of Subsection 108.01 of the Standard Specifications.
- D. PROPOSAL GUARANTY. Enclosed as evidence of good faith and as a guaranty that the bidder enters into a contract, is a proposal guaranty in the amount of at least ten percent (10%) of the bid, made unconditionally payable to the Montana Department of Transportation in the form of a bid bond executed by a surety corporation authorized to do business in Montana using the Department-furnished form. The proposal guarantee shall be forfeited to the Department of Transportation if the bidder fails or refuses to comply with the specifications referring to the execution of the contract agreement.
- E. CONTRACT TIME. The work begins on the effective date stated in the "Notice to Proceed" and is to be completed on or before the completion date, or number of working days stated on the Schedule of Items.
- F. REVISION/WITHDRAWAL OF BID. By submitting this bid, bidder agrees that it waives any right or ability to claim, request or receive (1) any revision of the bid, or (2) a withdrawal of its bid without the express written consent of the Commission and in accordance with the Specifications. If bidder discovers a material mistake in its bid (factual mistake, not judgmental), it understands and agrees that it may either perform the contract as originally bid, or else bidder understands and agrees that it may request the Transportation Commission for permission to withdraw its bid. It is agreed that the Commission will review the request to determine if a mistake occurred, was material and factual, and whether the bid should be allowed to be withdrawn. A bidder who wishes to claim error after its bid has been opened must notify the Department's Contract Plans Bureau no later than 4:30 p.m. two working days after the day of the bid-opening (not counting the day of the bid-opening). The notice must be by a notarized affidavit, under penalty of false swearing, signed by the bidder and accompanied by all worksheets used in the preparation of the bid, requesting relief from forfeiture of the bid bond and the responsibilities of award. The affidavit must describe the specific error(s), how they were made and who made them, and must certify that the worksheets provided are those that were used in preparing the erroneous bid. The Department will make its recommendation to the Commission. If the Commission does not concur in the error or determines that the error has not been proven sufficiently, it may award the contract and, if the bidder refuses to execute the contract as it was bid, the bid bond will be forfeited as stated by law.
- G. NON-COLLUSION. Bidder has not by or through any of its officers, partners, owners, or any other person associated therewith, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this project. This includes, but is not limited to, any negotiations or discussions between potential bidders: to encourage or dissuade a potential bidder from not bidding on a project or projects, or not attending a mandatory pre-bid conference; to dissuade a potential bidder from using another firm as a subcontractor or supplier; to encourage a firm not to bid as a subcontractor or supplier for any other firm on this project; to restrict a firm's area of operations; reference the firm's profits, profit margins, cost data, or proposed bid; and bidder is not financially interested in or otherwise affiliated in a business way with any other bidder on this project, including, but not limited to: any negotiations or agreement before bid-opening with another bidder to act as that bidder's subcontractor in the event that the other is the successful bidder. Bidder understands that if it has participated in any of the above, or any other form of collusion, it has violated this certification, it has violated the law (including 18 U.S.C. 1020), and both it and the persons involved are subject to criminal prosecution, civil action, and state and federal administrative sanctions (including debarment).
- H. AUTHORIZED AGENT. The undersigned is a responsible individual or official of the firm legally authorized to execute documents binding the firm or individual to the extent of this Proposal.
- I. DEBARMENT. The undersigned by signing this proposal acknowledges that he has read Subsection 102.12 of the Specifications relating to the ineligibility of bidders and certifies that the bidder has complied.
- J. DBE REQUIREMENTS. Bidder has complied with the project's DBE requirements, and agrees to in all ways comply with the Department's DBE Program.

- K. INDIAN RESERVATION WORK. If all or part of this project is located within the external boundaries of an Indian Reservation, bidder has read, fully understands and agrees to the provisions contained elsewhere in the bid package.
- L. EQUAL OPPORTUNITY CLAUSE CERTIFICATION. By signing this proposal the bidder acknowledges that failure to file timely, complete and accurate reports with the Joint Reporting Committee, the Director of OFCC or the Equal Employment Opportunity Commission is grounds for the imposition of sanctions as authorized by 41 CFR 60-1.7.

BIDDER UNDERSTANDS THAT THE MONTANA TRANSPORTATION COMMISSION RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS, TO WAIVE IRREGULARITIES, OR TO ADVERTISE FOR NEW PROPOSALS, AND BIDDER CONSENTS TO THAT RESERVATION BY THE COMMISSION.

BIDDER AGREES TO FURNISH ALL EQUIPMENT, LABOR, AND MATERIALS AND DO ALL WORK NECESSARY IN THE TIME SPECIFIED AND IN SUBSTANTIAL CONFORMITY WITH THE CONTRACT, FOR THE PRICES SET FORTH IN THE SCHEDULE OF ITEMS CONTAINED HEREIN.

BIDDER UNDERSTANDS THAT THE TRANSPORTATION COMMISSION WILL NOT ALLOW CHANGES TO BIDS AFTER SUBMISSION. BIDDER THEREFORE AGREES THAT, BY SIGNING AND SUBMITTING THIS PROPOSAL, BIDDER SPECIFICALLY WAIVES ANY OPPROTUNITY TO LATER REQUEST ANY REVISION OF THIS BID, AND WILL NOT REQUEST A REVISION UNDER SUBSECTION 28-2-1611 ET SEQ., MCA, OR ANY OTHER LEGAL OR EQUITABLE BASIS.

BIDDER AGREES THAT, IF IT MADE ANY MISTAKES IN THE BID, IT HAS ONLY TWO CHOICES AFTER THE DATE OF COMMISSION AWARD – ACCEPT ITS MISTAKES AND PERFORM THE WORK FOR THE AMOUNT BID, OR REFUSE TO EXECUTE THE CONTRACT AND FORFEIT ITS PROPOSAL GUARANTY.

Bidder (Name of Firm or Individual) (Type or Print)

(CORPORATE SEAL)

Business Address

By _____
Authorized Agent (Signature in Ink)

Title _____

Signed and sworn to before me this ____ day of _____, 2007.

(NOTARIAL SEAL)

Notary Public in and for the State of _____
My Commission expires _____

MONTANA DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

Bill Kennedy, Chairman
Montana Transportation Commission

Jim Lynch
Director of Transportation

Appendix 16.72 Sample Contract**CONTRACT**

This Agreement, made and entered into in duplicate, this <<AwardDateDay>> day of <<AwardDateMonth>>, 2007, by and between the State of Montana, acting by and through the Department of Transportation Highways Division, hereinafter called the Department, and <<Contractor>>, licensed to do business in Montana, its successors and assigns, hereinafter called the Contractor.

SECTION I: The Contractor, for and in consideration of the payment herein agreed to, promises and agrees to furnish, deliver and pay for all of the materials, to furnish all tools, machinery and equipment, and to perform all work for the project in <<CountyCounties>> County, State of Montana, _____ Project No. <<ProjectNumber>>, herein referred to as “the project”, according to this Contract. “Contract” includes all documents in that term’s definition in the Standard Specifications. “Standard Specifications” means the now current edition of the Department’s Standard Specifications for Road and Bridge Construction as amended. The Contractor agrees to complete the project at the unit prices bid by the Contractor for the respective estimated quantities, totaling the sum of <<SpellOutDollarAmt> (<<BidAmount>>) and such other items as are mentioned in its original Proposal, a copy of which, with prices named, are attached hereto and made a part of this Contract.

SECTION II: The Contractor, for and in consideration of the payment herein specified, further agrees that all work and labor for the project shall be performed in strict compliance with the Contract.

It is expressly understood and agreed that no rules, customs or usages, either local or otherwise, shall in any way be considered, implied, or inferred into this Contract if they in any way conflict with the Contract. It is understood and agreed that it is the Contractor’s sole responsibility to obtain all Contract documents from the offices of the Department in its building at Helena, Montana. All project and cost records of Contractor and any subcontractor, supplier, etc., are subject to review and audit at any time by

the Department or the Federal Highway Administration, and as otherwise provided by law.

SECTION III: The Contractor agrees that it will, except as herein provided, begin the actual performance of the work required and contemplated under this Contract, in accordance with the provisions set forth in the Contract, and that all of the materials shall be furnished and delivered and all labor shall be done and performed in every respect to the satisfaction and approval of the Engineer _____. It is expressly understood and agreed, that in case of failure on the part of the Contractor, for any reason, except with the written consent of the Department, to complete the furnishing and delivery of the material and the doing and performance of said work within the specified time, the Department has the right to deduct from any moneys due the Contractor, or if no moneys shall be due the Department shall have the right to recover, the amount of _____ dollars (\$___), per day, as fixed, agreed and liquidated damages, and not as a penalty, for each and every _____ day elapsing between the date stipulated for completion and the actual date of completion and final acceptance; this in accordance with the article of the Standard Specifications which refers to "Failure to Complete the Contract on Time".

SECTION IV; Contractor agrees that it will defend, protect, indemnify and save harmless the State of Montana and Department against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees), and losses to them from any cause whatever (including patent, trademark and copyright infringements) from the project, This includes any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses, arising out of, in connection with, or incidental to the Contract, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, actions, losses, costs or damages which are solely the result of the negligent acts, omissions or misconduct of Department's employees if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of Contractor's employees. The Contractor assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of its subcontractors, and the public. That responsibility includes all duties relating to safety, regardless of whether any such duties are, or are alleged to be,

“nondelegable” (e.g., the Montana Scaffolding Act, Montana Safe Place to Work Statute, etc.) The indemnification stated above is expressly intended by the parties to include those claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees), and losses that are, or are alleged or held to be, based upon a breach by the State or Department of a nondelegable duty relating to workplace safety for the Contractor’s employees, the employees of any subcontractor’s employees, and the public. This indemnification does not extend to CERCLA and CECRA claims, which are addressed in Standard Specification 107.26. Contractor will be responsible for any and all damages to property or persons that occur before final acceptance of the project. Contractor will obtain and maintain insurance necessary to comply with the Standard Specifications.

SECTION V: The Contractor agrees to receive the payment stated above as full compensation for furnishing all of the materials and labor required for this project, and in all respects, to complete this Contract to the satisfaction of the Department.

SECTION VI: Attached hereto are the Schedule of Items, the Proposal, any Schedule of Participation by DBEs required for this Contract, certain Special Provisions and other pertinent instruments.

SECTION VII; In accordance with §49-3-207, MCA, the Contractor agrees that the hiring of persons to perform work on this Contract will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the Contract.

SECTION VIII: Contractor confirms that it had sufficient time to prepare its bid, was able to adequately review and investigate the work site and contract documents, and waives any claim for more time to adequately review and investigate them, review subcontractors’ bids, and prepare its own bid. Contractor confirms its knowledge of the Department’s claims procedure, and expressly waives any potential claim for itself or any subcontractor, supplier, etc., that is not timely and completely submitted in accordance with that procedure.

SECTION IX: It is expressly understood and agreed between the parties that, as a condition precedent to the complete execution of this Contract, the Contractor will furnish a good and sufficient surety bond to the Department in the sum first set forth above, to be conditioned upon its faithful and complete performance of this Contract, subject to the approval of the Department.

In Witness Whereof, the Director of Transportation, by authority vested by the Montana Transportation Commission, has hereunto signed on behalf of the State of Montana, and the Contractor has hereunto attached its corporate seal duly attested by the signature of its duly authorized officer, on the date above written.

STATE OF MONTANA DEPARTMENT OF TRANSPORTATION
By _____
Director

Witness:

<<Contractor>

Contractor

President

Reviewed By:

Attorney, Montana Department of Transportation

Appendix 16.73 Sample Estimate and Grouping

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MONTANA DEPARTMENT OF TRANSPORTATION

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Report Name: TPLR013

ENGINEER'S ESTIMATE

LETTING DATE: 29-MAR-07

CONTRACT NO: 06207

AWARD DATE: 09-APR-07

PROJECT NO: 5025004000

PROJECT ID: HSIP 1806(4)

2001 - SIGNALS - FRONT/MAIN - BUTTE

SILVER BOW COUNTY

TYPE CODE: SFTY
 INSTALL TRAFFIC CONTROL DEVICES

2 LANE ASPHALT URBAN LENGTH: 0 kilometers

CATEGORY: 0001

TOTAL CONSTRUCTION		219,271
ICAP	@ 10.91%	23,922
ICAP + CONSTRUCTION		243,193
LOCAL FUNDS	@ 0.00%	00
FEDERAL AID REQUESTED	@ 90.00%	218,874
STATE AID REQUIRED	@ 10.00%	24,319
OTHER FUNDS	@ 0.00%	00
 TOTAL CONSTRUCTION ENGINEERING	@ 12.00%	26,313
ICAP	@ 10.91%	2,871
ICAP + CONSTRUCTION ENGINEERING		29,184
 LOCAL FUNDS	@ 0.00%	00
FEDERAL AID REQUESTED	@ 90.00%	26,266
STATE AID REQUIRED	@ 10.00%	2,918
OTHER FUNDS	@ 0.00%	00

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Report Name: TPLR013

ENGINEER'S ESTIMATE

LETTING DATE: 29-MAR-07

CONTRACT NO: 06207

AWARD DATE: 09-APR-07

PROJECT NO: 5025004000

PROJECT ID: HSIP 1806(4)

2001 - SIGNALS - FRONT/MAIN - BUTTE

SILVER BOW COUNTY

TYPE CODE: SFTY
STATE FURNISHED ELECTRICAL

2 LANE ASPHALT URBAN LENGTH: 0 kilometers

CATEGORY: 0002

TOTAL CONSTRUCTION		30,100
ICAP	@ 10.91%	3,284
ICAP + CONSTRUCTION		33,384
LOCAL FUNDS	@ 0.00%	00
FEDERAL AID REQUESTED	@ 90.00%	30,046
STATE AID REQUIRED	@ 10.00%	3,338
OTHER FUNDS	@ 0.00%	00
TOTAL CONSTRUCTION ENGINEERING	@ 0.00%	00
ICAP	@ 10.91%	00
ICAP + CONSTRUCTION ENGINEERING		00
LOCAL FUNDS	@ 0.00%	00
FEDERAL AID REQUESTED	@ 90.00%	00
STATE AID REQUIRED	@ 10.00%	00
OTHER FUNDS	@ 0.00%	00

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Report Name: TPLR013

ENGINEER'S ESTIMATE

LETTING DATE: 29-MAR-07
 AWARD DATE: 09-APR-07

CONTRACT NO: 06207
 PROJECT NO: 5025004000
 PROJECT ID: HSIP 1806(4)

2001 - SIGNALS - FRONT/MAIN - BUTTE
 SILVER BOW COUNTY

TYPE CODE: Y060
 RESET FIRE HYDRANT [CHARGE TO HSIP 1806(5)]

2 LANE ASPHALT URBAN LENGTH: 0 kilometers

CATEGORY: 0003

TOTAL CONSTRUCTION			2,500
ICAP	@	10.91%	273
ICAP + CONSTRUCTION			2,773
LOCAL FUNDS	@	0.00%	00
FEDERAL AID REQUESTED	@	90.00%	2,496
STATE AID REQUIRED	@	10.00%	277
OTHER FUNDS	@	0.00%	00
TOTAL CONSTRUCTION ENGINEERING	@	0.00%	00
ICAP	@	10.91%	00
ICAP + CONSTRUCTION ENGINEERING			00
LOCAL FUNDS	@	0.00%	00
FEDERAL AID REQUESTED	@	90.00%	00
STATE AID REQUIRED	@	10.00%	00
OTHER FUNDS	@	0.00%	00

19 APR 2007

MONTANA DEPARTMENT OF TRANSPORTATION

Page 9 of 9

Report Name: TPLR013

ENGINEER'S ESTIMATE

CONTRACT NO: 06207
 PROJECT NO: 5025004000
 PROJECT ID: HSIP 1806(4)

2001 - SIGNALS - FRONT/MAIN - BUTTE
 SILVER BOW COUNTY

CAT #	TYPE CODE	FUNDS						
		CONSTRUCTION	CONST ENGR	TOTAL COST	FEDERAL	STATE	LOCAL	OTHER
0001	SPTY	\$243,193	\$29,184	\$272,377	\$245,139	\$27,238	\$0	\$0
				LENGTH IN kilometers: 0		COST/ kilometers:		\$0
0002	SPTY	\$33,384	\$0	\$33,384	\$30,046	\$3,338	\$0	\$0
				LENGTH IN kilometers: 0		COST/ kilometers:		\$0
0003	Y060	\$2,773	\$0	\$2,773	\$2,496	\$277	\$0	\$0
				LENGTH IN kilometers: 0		COST/ kilometers:		\$0
TOTALS:		\$279,350	\$29,184	\$308,534	\$277,681	\$30,853	\$0	\$0
				LENGTH IN kilometers: 0		COST/ kilometers :		\$0

ITEM DESCRIPTION											
A 104 100 000	MISCELLANEOUS WORK	UNIT	5,000.000	1 000	5 000	0 0					
J 109 200 OQG	MOBILIZATION	L SUM	1.000	8 00 000	9 000	0 0					
E 202 220 000	REMOVE MEDIAN CURB	M	24.000	10 000	240 0	0 0					
E 202 230 000	REMOVE CURB & GUTTER	M	10.000	17 000	170 0	0 0					
E 202 241 000	REMOVE SIDEWALK	M2	10.000	18 000	180 0	0 0					
C 301 260 000	BASE COURSE GR GA •	M3	3.000	55 000	165 0	0 0					
D 401 030 000	PLANT MIX BIT SURF GR C	MT	2.000	10 000	210 0	0 0					
E 608 100 000	SIDEWALK-CONCRETE 100 MM	M2	27.000	60 000	1 620	0 0					
E 609 000 000	CURB & GUTTER-CONCRETE	M	10.000	97 000	970 0	0 0					
E 616 010 000	FOUNDATION-CONCRETE	M3	8.600	1 10 000	9 460	0 0					
G 616 041 000	CONDUIT-STEEL 41 MM RIGID	M	30.000	40 000	1 200	0 0					
G 616 053 000	CONDUIT-STEEL 53 MM RIGID	M	30.000	46 000	1 380	0 0					
G 616 063 000	CONDUIT-STEEL 63 MM RIGID	M	30.000	80 000	2 400	0 0					
G 616 241 000	CONDUIT-PLASTIC 41 MM	M	240.000	19 000	4 560	0 0					
G 616 253 000	CONDUIT-PLASTIC 53 MM	M	80.000	30 000	2 400	0 0					
G 616 480 000	PULL BOX-CONCRETE TYPE 1	Each	5.000	24 000	1 245	0 0					
G 616 490 000	PULL BOX—CONCRETE TYPE 2	EACH	6.000	29 000	1 770	0 0					
G 616 500 000	PULL BOX-CONCRETE TYPE 3	EACH	2.000	38 000	774	0 0					
G 617 000 340	CABLE-COPPER 3AWG14-600V	M	425.000	2 000	850	0 0					
G 617 000 940	CABLE-COPPER 9AWG14-600V	M	30.000	5 000	150	0 0					
G 617 001 240	CABLE-COPPER 12AWG14-600V	M	160.000	6 000	960	0 0					
G 617 001 540	CABLE-COPPER 15AWG14-600V	M	80.000	8 750	700	0 0					
G 617 010 060	CONDUCTOR-COPPER AWG6-GOOV	M	60.000	2 000	120	0 0					
G 617 010 080	CONDUCTOR-COPPER	M	60.000	2 000	120	0 0					

			AWG8-600V							0
G 617	010	100	CONDUCTOR-COPPER	M	340.000	1	250		425	0
			AWG10-600V							0
G 617	140	100	SIG STANDARD TYPE 1-	EACH	1.000	45	000		457	0
			100			7				0
G 617	155	900	SIG STANDARD TYPE 2-	EACH	1.000	65	000		650	0
			A-900-0			0				0
G 617	155	960	SIG STANDARD TYPE 2-	EACH	1.000	46	000		460	0
			A-900-6			0				0
G 617	155	970	SIG STANDARD TYPE 2-	EACH	2.000	59	000	1	176	0
			A-900-7			9				0
G 617	155	990	SIG STANDARD TYPE 2-	EACH	1.000	43	000		436	0
			A-900-9			6				0
G 617	165	950	SIG STANDARD TYPE 3-	EACH	1.000	78	000		786	0
			A-900-5			6				0
G 617	192	000	PUSH	EACH	4.000	19	000		796	0
			BUTTON/PEDESTRIAN			9				0
G 617	211	300	SIG-TRAF 1 COLOR-i	EACH	2.000	46	000		926	0
			WAY 30			3				0
G 617	231	330	SIG-TRAF 3 COL-1 WAY 30-	EACH	10.000	77	000	7	720	0
			30-30			2				0

12502 4266078000
01 29 SFTY R 4
ENGINEERS ESTIMATE

DATE 04/18/02 PROJECT 5-3(78)125
PAGE 2

ITEM DESCRIPTION										
G 617 251 330	SIG-TRAF 5 COL-1 W 30-30-30-30	EAC H	2.000	1	33 000	2	660 00			
G 617 2~0 020	SIG-PEDESTRIAN TYPE 2	EAC H	4.000		26 000		104 00			
G 617 405 400	CONTLR/TRAF-ACTUAT TYPE 4A	EAC H	1.000		52 000		525 00			
G 617 410 200	CONTROLLER-CAB PEDESTAL TYPE M	EAC H	1.000		90 000		801 00			
G 617 500 000	DETECTOR/LOOP	EAC H	14.000		75 000	10	570 00			
G 617 510 000	DETECTOR/LOOP SHLD CABLE	M	915.000		3 000	2	745 00			
G 617 610 600	S~RV ASS~MBLY-60 AMP	EAC H	1.000	1	10 000	1	100 00			
G 617 800 100	REMOVE AND SALVAGE	L Slm	1.000	1	20 000	1	200 00			
G 617 800 200	REMOVE & RESET MISC ITEMS	L SUN	1.000		20 000		200 00			
0 618 010 000	TRAFFIC CONTROL-DEVICES CB	UNI T	6,000.000		750	4	500 00			
G 619 034 000	SIGNS-SHEET ALUN REFL SHT III	M2	4.500		20 000		900 00			
G 619 700 000	REMOVE SIGNS	EAC H	3.000		40 000		120 00			
G 619 720 000	RESET SIGNS	EAC H	1000		95 000		95 00			
G 620 001 000	STRIPING-WHITE EPOXY SOLID	KM	0.300		38 000		115 50			
G 620 002 000	STRIPING-YELLOW EPOXY SOLID	KM	0.300		39 000		117 00			
G 620 130 000	WORDS/SYMBOLS-WHITE EPOXY	L	34.000		68 000	2	312 00			
G 620 135 000	WORDS/SYMBOLS-YELLOW EPOXY	L	1.000		58 000		58 00			
C 620 720 000	REMOVE PLASTIC STRIPING	M	426.000		9 000	3	834 00			
C 620 725 000	REMOVE PLASTIC WORDS & SYMBOLS	M2	31.600		30 000		948 00			
TOTAL BASE BID							91 380 50			

12502 4266078000
01 29 SFTY R 4
ENGINEERS ESTIMATE

DATE 04/18/02 PROJECT 5-3(78)125
PAGE 3

ITEM DESCRIPTION

G 617159900	SIG STANDARD TYPE	2-A-900-0	EACH	1.0003640	000	3640	00
G 617159960	SIG STANDARD TYPE	2-A-900-6	EACH	1.0002658	000	2658	00
G 617159970	SIG STANDARD TYPE	2-A-900-7	EACH	2.0002722	000	5444	00
G 617159990	SIG STANDARD TYPE	2-A-900-9	EACH	1.0003632	000	3632	00
G 617169950	SIG STANDARD TYPE	3-A-900-5	EACH	1.0003165	000	3165	00
G 617409400	CON'TLR/TRAF-ACTI	JATTYPE 4A	EACH	1.0007945	000	7945	00
				<u>TOTAL BASE BID</u>		<u>26 484 00</u>	

Appendix 16.74 Permits

Topic	Agency	Conditions Requiring	When to Initiate	References
Air Pollution	DEQ	Air pollution from newly-constructed point source (asphalt plant, rock crusher, etc)	Prior to commencing construction	
Airport-Roadway Clearance	FAA	Airspace intrusion of roadway facility (proposed construction in the vicinity of public use/military airports may require FAA notice)	During design/prior to commencing construction	FHPM 6-1-1-2 FAA Req. p. 77
Building Permit	County/City/State	Construction of any building	Prior to commencing Construction	
Conditional Use Permit	County/City/DEQ	Development within 61 km (200 feet) of water must be consistent with the local Shoreline Master Plan	No permit if consistent	
Cultural, Archaeological, Or Historic Sites #106 (Sec 106)	SHPO, FHWA, ACHP	Suspected/actual, cultural/archaeological historic properties impacted by project	During preparation of environmental document	36 CFR 800 16 USC 470 Historic Preservation Act
Endangered/Threatened Species	USFWS	Plant or animal species that are suspected to be or actually are, of endangered or threatened status	During preparation of environmental document	16 USC 1531-1543
Fish & Wildlife	USFWS, FWP	Consultant required when any waters are proposed To be modified or controlled	During preparation of environmental document	33 USC 66., 662
Floodplains	DEQ/County	Any structure/activity which may adversely affect The flood regime of any stream within the affected Flood zone	After/during preparation or environmental document	State-Flood Control Zone Act of 1935 Federal EO 11988
Forest Practices Approval	DNR (Area offices)	Public/private land capable of supporting merchantable timber – some activities: road construction, pits, Pesticide use, hydraulic permits, shoreline permits, Reforestation, etc.	Environmental document phase/prior to commencing construction	
Hydraulics Permit	DNRC	Projects that will use, divert, obstruct, or change the natural flow or bed of any state waters (culvert work, Realignment, bridge replacement, etc.)	During/after preparation of environmental document	
Prime & Unique Farmland	Soil Conservation Services (USDOA)	Lands impacted are of prime or unique status	During preparation of environmental document	7 CFR 650
"Section 4(f)" Lands	FHWA, Affected Agency DOI, HUD And USDOA	Use of park and recreation lands, wildlife and waterfowl refuges, and historic sites of national, state or local significance	During preparation of environmental document (Amended 5/19/78) FHPM 7-7-2(20)	49 USC 1651 (f) DOT Act of 1966 #4 23 CFR 138
Sewage Facilities	DEQ/County	Construction modification of domestic/industrial Wastewater facilities (sewer relocation, rest area Construction, etc.)	Prior to commencing construction	
Shoreline Management Substantial Development	County/City/DEQ Tribal	Shoreline development or construction valued at \$1,000 or more, or materially interfering with normal public use of water	During preparation of environmental document	
Short-term Modification (Water Quality)	DEQ	Short-term activities which may result in temporary reduction of water quality standard, and activities not subject to a waste discharge permit or water quality certification	During Design	
SM-2 Surface Mine Reclamation	DEQ	Mining (pities, quarries), 0.8 ha (2 acres) or more/ 9 091 tonnes (10,000 tons) or more	During preparation of environmental document	
Sole Source Aquifer	EPA/DEQ	Any activity which may affect the aquifer recharge zone	During preparation of environmental document	SDWA P.L. 93-423
State Waster Disposal	DEQ	Discharge of waste material from sand and gravel washing, pit dewatering or cement/asphalt plant Discharge into state waters	During design	

Water Pollution Discharge (MDES)	DEQ	Discharge of pollutants into state surface waters	During design	
Water Quality	DEQ	Prior to issuance of a federal permit/license for Activity which involves discharge into navigable Waters, certification of compliance with state water Quality standards is necessary	During project development	FHWA #401
Water Rights	DNRC	Appropriation of ground water or surface water	Prior to putting water to use	
Waters/ Wetlands (Sec. 404 Dredge/ Fill)	Army Corps of Engineers (Coordination with USFWS)	Discharging, dredging, or placing fill materials within waters of the USA or adjacent wetlands	Early stages of project development	Sec. 404 FWPCA 1972 33 USC 1344
Waterways (Sec. 10)	Army Corps of Engineers (Coordination with USFWS)	Obstruction alteration, or improvement of any navigable water (rechanneling, piers, wharfs, dolphins, bulkheads, buoys, etc.)	Early stages of project development	Rivers and Harbors Act of 1899 33 USC 401 #10
Waterways (Sec. 9)	Coast Guard (Coordination with USFWS)	Bridges and causeways in navigable waters, including all tidal-influenced streams	After design	Rivers and Harbors Act of 1899 33 USC #9
Wetlands	USFWS or NMFS	Impact to lowlands covered with shallow and Sometimes temporary/intermittent waters (swamps, marches, bogs, sloughs, potholes, etc.)	During preparation of environmental document	49 USC 1651 EO 11990(Protection of Wetlands)
Wild & Scenic Rivers	USFS/NPS	Impacts to rivers or streams in or having potential for designation in the National Wild and Scenic River System	During preparation of environmental document	

LEGEND:

ACHP – Advisory Council on Historic Preservation
 ARM – Administrative Codes of Montana
 CFR – Code of Federal Regulations
 CZMA – Coastal Zone Management Act
 DNR – Department of Natural Resources (state)
 DOE – Department of Ecology (state)
 DOI – U.S. Department of Interior
 DOT – U.S. Department of Transportation
 EO – Executive Order
 EPA – Environmental Protection Agency (federal)
 FAA – Federal Aviation Administration (DOT)
 FERC – Federal Energy Regulatory Commission
 FHWA – Federal Highway Administration (DOT)
 FWCA – Fish and Wildlife Coordination Act
 FHPM – Federal Highway Program Manual
 MCA – Montana Code Annotated
 MPDES – Montana Pollution and Discharge System
 NMFS – National Marine Fisheries Service (Department of Commerce)
 NPDES – National Pollutant Discharge Elimination System
 NPS – National Park System
 OAHP – Office of Archaeology and Historic Preservation (state)
 SDWA – Safe Drinking Water Act
 USC – United States Code
 USDOA – U.S. Department of Agriculture
USFS – U.S. Forest Service (USDOA)

Appendix 16.75 Local Agency Plans Preparation Checklist**PLANS PREPARATION CHECKLIST**

<i>Item</i>	<i>Required</i>	
	Yes	No
Road Plans		
Title Sheet		
Table of Contents		
Notes Sheet		
Linear & Level Data		
Control Traverse Diagram		
Typical Sections		
Summaries of Plan Quantities		
Detail Sheets		
Plan & Profile Sheets		
Cross Sections		
Erosion Control Plans		
Signing Plans		
Title Sheet		
Table of Contents		
Signing & Delineation Quantities		
Sign Location & Specifications Sheet		
Detail Sheets		
Plan Sheets		
Electrical Plans		
Title Sheet		
Table of Contents		
Electrical Quantities Summaries		
Electrical Details		
Signal & Luminaire Pole Schedules		
Loop Detector Schedule		
Conduit & Wire Schedule		
Service Wiring Diagrams		
Electrical Plan Sheets		
Landscaping Plans		
Specifications		
Special Provisions		
MT Public Works Standard Specs		
MDT Standard Specifications		

Item	Required	
	Yes	NO
Miscellaneous Items		
State Furnished Material		
City Furnished Material		
County Furnished Material		
Design Exception Approval		
Proprietary Items Approval		
Cost Estimate		
Funding Splits		
Mobilization		
Traffic Control Costs		
Construction Engineering		
Contingency		
Right-of-Way & Utilities		
Right-of-Way Acquired		
Construction Permits		
Utilities Relocated		
Relocate Utilities During Construction		
Permits		
Corps of Engineers 404 Permit		
Storm-Water Runoff Permit		
124 Stream Protection Act Permit		
Environmental Issues		
Wetland Mitigation Onsite		
Threatened or Endangered Species		
SHPO Approval - Cultural Requirements		
Hazardous Materials		
Agreements		
Railroad Agreement		
City Cost Participation		
County Cost Participation		
City Streets Used as Detours		
County Roads Used as Detours		
Memorandum of Understanding		

Appendix 16.76 Subcontractor List

Montana Department of Transportation

Subcontractor List

To Be Submitted with the Bid Proposal

Project Name _____

The work to be performed is to be listed below the subcontractor(s) name.

If no subcontractor is listed below, the bidder acknowledges that it does not intend to use any subcontractor to perform those items of work.

Subcontractor Name _____

Work to be Performed _____

Subcontractor Name _____

Work to be Performed _____

Subcontractor Name _____

Work to be Performed _____

Subcontractor Name _____

Work to be Performed _____

Appendix 16.77 Disadvantaged Business Enterprise Utilization Certification**DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS**Federal Aid Project No(s)

To be eligible for award of this contract, the bidder must execute and submit as part of its bid these DBE REQUIREMENTS. Contract award will be conditioned upon satisfaction of the Montana Department of Transportation's (MDT) requirements as set forth below and in the Department's DBE Program.

(a) The SCHEDULE OF PARTICIPATION BY DBEs will be used to determine whether the bidder has complied with the DBE goals. Bids that do not contain a Schedule, or contain a blank Schedule, will be considered nonresponsive and rejected. Bids containing a Schedule that is incomplete will be considered nonresponsive and - rejected pursuant to Subsection 102.08 of the Standard Specifications.

(b) The successful bidder will be selected on the basis of having submitted the lowest responsive, responsible bid which has met the DBE goal. Should the low and otherwise responsive, responsible bid fail to comply with the goal, the next lowest and otherwise responsive, responsible bid will be examined to determine if it complies with the goal, until a responsive, responsible bid complies with the goal. Should all otherwise responsive, responsible bids fail to comply with the goal, goal responsiveness will be determined on the basis of good faith efforts taken to comply with the goal. The apparent low bid containing a percentage of certified DBE participation less than the average percentage will be considered nonresponsive and rejected.

(c) Prime bids submitted by certified DBEs will not be used to determine the average percentage.

(d) DBEs not certified by MDT prior to the date the bids are opened will not be considered in determining whether the bid has complied with the goals.

CERTIFICATION

The contractor agrees to use MDT-certified DBEs in the award of subcontracts and owner/operator work to the fullest extent consistent with performance of the contract and in accordance with the goals for this contract. Under this certification, the bidder agrees to maintain records to document contacts and specific efforts made to seek out and identify potential DBE contractors. Substitution of DBEs or dollar amounts in the Schedule of Participation will not be permitted prior to the award of the contract. If it is determined the DBE is unable to perform due to default, overextension, expiration of certification or becoming decertified, the bidder agrees to replace a DBE subcontractor and/or supplier with another DBE only in accordance with the MDT DBE Program.

THE DBE GOAL FOR THIS CONTRACT IS %

THE NAME OF THE FIRM, TOTAL DOLLAR AMOUNT AND TYPES OF GENERAL WORK TO BE PERFORMED MUST BE INCLUDED ON THE SCHEDULE OF PARTICIPATION, OR THE BID WILL BE CONSIDERED NONRESPONSIVE AND REJECTED. IF THE FIRM IS A SUPPLIER ONLY, SO INDICATE ON THE SCHEDULE OF PARTICIPATION.

Bids submitted by MDT-certified DBEs that compete as prime contractors will be considered to comply with the DBE goals.

REMARKS

Attainment of DBE goals will be determined by each DBE executing a distinct work item and actively performing, managing and supervising those work items as determined by MDT in accordance with its DBE Program.

The following criteria will be used to determine the percentage of goal participation allowed for the contract:

COSTS OF GOODS**Manufacturer**

Participation will be allowed for 100% of the cost of the contract work item.

Regular Dealer or Supplier

Participation will be allowed for 60% of the cost of the contract work item. Only 60% of the total bid by the DBE supplier will be counted towards the goal.

COST OF SERVICE PERFORMED

Contractor and/or Subcontractor (100% of the service performed)

Work performed (e.g. delivery of materials, placement of materials, etc.) using the DBE's own equipment and/or personnel in accordance with the MDT DBE program.

Federal Aid Project No.(s) _____

SCHEDULE OF PARTICIPATION BY DBEs

List below information pertaining to MDT-certified DBEs with which the bidder has negotiated an agreement to participate in this contract in accordance with the MDT DBE Program requirements. If any DBE listed below is a "Supplier" only, as defined on page 1 and the MDT DBE Program, please note it and specify only 60% of the total amount of their bid.

Name of Firm/City/State	Total Dollar Amount Towards Goal	Type of Work DBE will be doing	If Supplier, Total amount of their quote	Supplier () Only [60% of Total Amt]

Total DBE Dollar amount \$ _____ Total DBE % of Prime Bid _____%

Name of Prime:

NOTE: Participation toward meeting the DBE goal will be determined from the Schedule of Participation, based upon the service performed by the DBE which provides a commercially useful function in accordance with the MDT DBE Program.

Information listed by the apparent low bidder on a DBE Schedule of Participation will be verified by MDT and used to determine if the bid complies with the DBE goal. Bidders must use only MDT-certified DBEs with whom agreements have been negotiated directly between the bidder and the DBE.

By submitting this bid, the contractor:

- a) agrees to fully comply with the MDT DBE Program;
- b) agrees to require its DBE subcontractors to comply with the Program;
- c) agrees to ensure its EEO representative is aware of Program requirements;
- d) and acknowledges that it understands violations of the Program can result in sanctions which may include debarment of the contractor and subcontractor from Department contracts and subcontracts for up to three (3) years.

Appendix 16.78 Sample Invitation For Bids**LETTING OF MAY 23, 2002**

Sealed bids on the following projects will be received by the Montana Department of Transportation-Highways Division, Contract Plans Section, Room 101, 2701 Prospect, Helena, Montana until 9:00 am. on May 23, 2002, the bids being publicly opened and read thereafter at 10:00 a.m. in the Department's auditorium.

Bid proposals, plans, cross-sections, dirt runs and erosion control plans if available, and full instructions to bidders are on file for examination and may be obtained from the Contract Plans Bureau. These documents may be requested by FAX (406) 444-7236, (see enclosed order form) by mail or by calling (406) 444-6216, 6212 or 6215 or TTY 444-7696.

All bid documents are available for downloading and/or printing at no charge at the following web site: http://www.met.mt.gov/business/contracting/current_letting.shtml under the "Bid Packages" link. Additional bid letting information is also available on this web site.

Cost for hard copies of these documents vary with each project and is quoted in the project information contained herein. There will be no refund allowance for documents ordered and returned. Do not send cash. Please make all checks payable to the Montana Department of Transportation. Please do not send payment until billed.

Persons or firms desiring to qualify or bid on highway construction on the basis of a joint venture must declare their intention by executing a "Declaration of Joint Venture and Power of Attorney." Joint Venture affidavits must be included with the Bid Proposal.

Any contract entered into pursuant to this advertisement is subject to all appropriate state and federal civil rights laws. The prime and subcontractors are required to pay the wage rates set out in the bid proposal.

The Department hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or National origin in consideration of an award. In addition, the successful bidder must pay the minimum wage rates set out in the bid proposal.

MDT will not discriminate on the basis of race, color, national origin or sex in the award, performance or administration of any MDT contract or in the administration of its DBE program (49 CFR Part 26). MDT attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the department. Alternate accessible formats of this document will be provided upon request. If reasonable accommodation is needed to participate in MDT bid lettings, call the Civil Rights Bureau at 444-6331 or TTY 406-444-7696 [TTY 1-800-335-7592 (toll free)].

Contractor Registration

Effective July 1, 1996, Montana law requires all contractors to register with the Montana Department of Labor.

On Federal-aid projects, contractors must register prior to executing a contract

On State-funded projects, bidders must be registered prior to submitting a bid.

For information regarding this requirement, contact the Department of Labor at 1-406-444-7734 or TTY 1-406-444-5549.

MONTANA
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

Bill Kennedy, Chairman
Montana Transportation Commission

Jim Lynch
Director of Transportation

1. Signal-US 93/MT 40-Whitefish
Federal Aid Project No. NH 5-3(78)125

Upgrading of traffic signals, lighting, ADA curbs, sidewalks and pavement markings on the Signal — US 93/MT 40 — Whitefish project in Flathead County.

The project is located just south of the City of Whitefish on US Route 93 (N-5) at its intersection with State Route 40 (N-38) in Section 12, Township 30 North, Range 22West.

INVOLVING:

5,000.000	UNIT	MISCELLANEOUS WORK	1.000	EACH	SIG STANDARD TYPE 2— A~900—6
1.000	L	MOBILIZATION	2.000	EACH	SIG STANDARD TYPE 2—A- 900-7
24.000	SUM				
24.000	M	REMOVE MEDIAN CURB	1.000	EACH	SIG STANDARD TYPE 2-A-900- 9
10.000	N	REMOVE CURB & GUTTER	1.000	EACH	SIG STANDARD TYPE 3-A- 900~5
10.000	M2	REMOVE SIDEWALK	4.000	EACH	PUSH BUTTON/PEDESTRIAN
3.000	M3	BASE COURSE GR 6A	2.000	EACH	SIG—TRAF 1 COLOR—i WAY 30
2.000	MT	PLANT MIX BIT SURF GR C	10.000	EACH	SIG-TRAF 3 COL-1 WAY 30-30- 30
27000	M2	SIDEWALK-CONCRETE 100 MM	2.000	EACH	SIG-TRAF 5 COL-1 W 30-30-30- 30
10.000	M	CURB & GUTTER~CONCRETE	4.000	EACH	SIG—PEDESTRIAN TYPE 2
8.600	M3	FOUNDATION—CONCRETE	1.000	EACH	CONTLR/TRAF—ACTUAT TYPE 4A
30.000	M	CONDUIT-STEEL 41 MM RIGID	1.000	EACH	CONTROLLER-CAB PEDESTAL TYPE M
30.000	M	CONDUIT-STEEL 53 MM RIGID	14.000	EACH	Detector/LOOP
30.000	M	CONDUIT-STEEL 63 MM RIGID	915.000	M	DETECTOR/LOOP SHLD CABLE
240.000	M	CONDUIT—PLASTIC 41 MM	1.000	EACH	SERV ASSEMBLY-60 AMP
80.000	M	CONDUIT-PLASTIC 53 MM	1.000	L	REMOVE AND SALVAGE
5.000	EAC	PULL BOX-CONCRETE TYPE 1	1.000	SUM	REMOVE & RESET MISC ITEMS
6.000	H				
6.000	EAC	PULL BOX-CONCRETE TYPE 2	6,000.000	UNIT	TRAFFIC CONTROL-DEVICES CB
2.000	H				
2.000	EAC	PULL BOX-CONCRETE TYPE 3	4.500	M2	SIGNS-SHEET ALUM REFL SHT III
425.000	H				
425.000	M	CABLE-COPPER 3AWG14—600V	3.000	EACH	REMOVE SIGNS
30.000	M	CABLE—COPPER 9AWG14-600V	1.000	EACH	RESET SIGNS
160.000	M	CABLE-COPPER 12AWG14—600V	0.300	KM	STRIPING-WHITE EPOXY SOLID
80.000	M	CABLE-COPPER 15AWG14-600V	0.300	KM	STRIPING-YELLOW EPOXY SOLID
60.000	M	CONDUCTOR-COPPER AWG6- 600V	34.000	L	WORDS/SYMBOLS—WHITE EPOXY
60.000	M	CONDUCTOR-COPPER AWGS- 600V	1.000	L	WORDS/SYMBOLS-YELLOW EPOXY
340.000	M	CONDUCTOR-COPPER AWG10- GOOV	426.000	M	REMOVE PLASTIC STRIPING
1.000	EAC	SIG STANDARD TYPE 1-100	31.600	M2	REMOVE PLASTIC WORDS & SYMBOLS
1.000	H				
1.000	EAC	SIG STANDARD TYPE 2-A-900--0			
	H				

Appendix 16.79

Form 1273 Required Contract Provisions, FHWA Construction Contracts

FORM FHWA-1273 (REV. 3-15-02)

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 USC 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the

contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive

Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee

performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeymanlevel wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above)

shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such work week unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each

subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each

subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification – Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other

remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/ proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49CFR29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or

voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion-Lower Tier Covered
Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**XII. CERTIFICATION REGARDING USE OF CONTRACT
FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Appendix 16.80 Form LLL Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES Approved by OMB

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year ____ quarter ____ date of last report ____	
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known: Congressional District , if known:			5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District , if known:		
6. Federal Department/Agency:			6. Federal Program Name/Description:		
			CFDA Number, if applicable: _____		
7. Federal Action Number , if known:			9. Award Amount , if known:		
			\$ _____		
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLLA, if necessary)			b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): (attach Continuation Sheet(s) SF-LLLA, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned			13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____		
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____					
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLLA, if necessary)					
15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No					

<p>16.</p> <p>Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: Print Name: Title: Telephone No.: _____ Date:</p>
<p>Federal Use Only:</p>	<p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and Reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Appendix 16.81 EEO Affirmative Action Requirements On Federal & Federal-Aid Construction Contracts

Q:CP-STD:470

7-1-78

Rev. 10-1-82

Rev. 4-1-85

Rev. 5-1-86

SPECIAL PROVISIONS

EEO AFFIRMATIVE ACTION REQUIREMENTS ON FEDERAL & FEDERAL-AID CONSTRUCTION CONTRACTS

Effective immediately all bid proposals for Federal-Aid contracts and subcontracts will include the following requirements listed as Appendix A & B. These requirements are applicable only when the contract or subcontract consists of \$10,000 or more.

There will be some duplicate material in the contract as a result of incorporating these new Office of Federal Contract Compliance Programs requirements; however, the Department of Highways cannot discontinue use of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities" (pink sheets found elsewhere in the proposal) as it is regulatory material which requires an amendment by the Secretary of Transportation and publishing in the Federal Register. The provisions for "Specific Equal Employment Opportunity Responsibilities" will be amended in the near future to eliminate any duplication in the contract provisions.

Your attention is directed to paragraph 3 of Appendix A which points out that the Contractor will provide written notification to OFCCP of award of any subcontract in excess of \$10,000. The contractors are advised that their notification will continue, as our regular reporting procedures, by making such notification to the Montana Department of Highways which will then report it to the FHWA, who will in turn report to OFCCP.

APPENDIX A

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidders attention is called to the Equal Opportunity Clause and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR FEMALE PARTICIPATION EACH TRADE

6.9%

TIMETABLES

GOALS FOR MINORITY PARTICIPATION IN

EACH TRADE

153 Great Falls, MT

SMSA (Standard Metropolitan Statistical Area) Counties

3040 Great Falls, MT

3.21

Cascade County

Non-SMSA Counties

4.1%

Blaine, Broadwater, Chouteau, Fergus, Glacier, Hill, Jefferson, Judith Basin, Lewis & Clark, Liberty, Meagher, Petroleum, Phillips, Pondera, Teton, Toole, Wheatland

154 Missoula, MT

Non-SMSA Counties

2.7%

Beaverhead, Deer Lodge, Flathead, Granite, Lincoln, Madison, Mineral, Lake Missoula, Powell, Ravalli, Sanders, Silver Bow

155 Billings, MT

SMSA Counties 0880 Billings, MT	3.3%
Yellowstone County Non-SMSA Counties Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Gallatin, Garfield, Golden Valley, McConnell,	3.31
Musselshell, Park, Powder River, Prairie, Roaebud, Stillwater, Sweet Grass, Treasure, Wibaux, Yellowstone Nat'l Park Non-SMSA Counties Valley, Daniels, Sheridan, Richland, Roosevelt	4.4%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

APPENDIX B

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications
 - a. "Covered area" means the State of Montana;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employers Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race)
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands) and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification)
2. whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractors or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to

achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of that action was taken with respect to each individual. If such individual was sent to the union hiring all for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

1. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

1. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, *including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group, has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized)

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which established different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).